

17D-2-101. Title.

This chapter is known as the "Local Building Authority Act."

Enacted by Chapter 360, 2008 General Session

17D-2-102. Definitions.

As used in this chapter:

(1) "Authority board" means the board of directors of a local building authority, as described in Section 17D-2-203.

(2) "Bond" includes a bond, note, or other instrument issued under this chapter evidencing an indebtedness of a local building authority.

(3) "Creating local entity" means the local entity that creates or created the local building authority.

(4) "Governing body" means:

(a) for a county, city, or town, the legislative body of the county, city, or town;

(b) for a school district, the local school board for the school district;

(c) for a local district, the local district's board of trustees; and

(d) for a special service district, the special service district's governing body, as defined in Section 17D-1-102.

(5) "Local building authority":

(a) means a nonprofit corporation that is:

(i) created as provided in Section 17D-2-201;

(ii) described in Section 17D-2-103; and

(iii) subject to and governed by the provisions of this chapter; and

(b) includes a nonprofit corporation created as a municipal building authority before May 5, 2008 under the law then in effect.

(6) "Local district" has the same meaning as provided in Section 17B-1-102.

(7) "Local entity" means a county, city, town, school district, local district, or special service district.

(8) "Mortgage" means any instrument under which property may be encumbered as security for an obligation, including a mortgage, trust deed, indenture, pledge, assignment, security agreement, and financing statement.

(9) "Project" means an improvement, facility, property, or appurtenance to property that a local entity is permitted under law to own or acquire, whether located inside or outside the local entity's boundary, including:

(a) a public building or other structure of any kind; and

(b) a joint or partial interest in the improvement, facility, property, or appurtenance to property.

(10) "Project costs":

(a) means all costs incurred in the development of a project; and

(b) includes:

(i) organizational and incorporation fees, including filing, legal, and financial advisor fees;

(ii) the cost of a site for the project;

(iii) the cost of equipment and furnishings for the project;

(iv) the cost of planning and designing the project, including architectural,

planning, engineering, legal, and fiscal advisor fees;

- (v) contractor fees associated with the project;
- (vi) the cost of issuing local building authority bonds to finance the project, including printing costs, document preparation costs, filing fees, recording fees, legal and other professional fees, underwriting costs, bond discount costs, any premium on the bonds, and any fees required to be paid to retire outstanding bonds;
- (vii) interest on local building authority bonds issued to finance the project;
- (viii) carrying costs;
- (ix) interest estimated to accrue on local building authority bonds during the period of construction of the project and for 12 months after;
- (x) any amount the governing body finds necessary to establish one or more reserve funds;
- (xi) any amount the governing body finds necessary to provide working capital for the project;
- (xii) all costs of transferring title of the project to the creating local entity;
- (xiii) all costs of dissolving the local building authority; and
- (xiv) all other reasonable costs associated with the project.

(11) "Special service district" has the same meaning as provided in Section 17D-1-102.

Enacted by Chapter 360, 2008 General Session

17D-2-103. Status and authority of a local building authority.

A local building authority:

- (1) is a public entity and an instrumentality of the state, created by a local entity solely for the purpose of constructing, acquiring, improving, or extending, and financing the costs of, one or more projects on behalf of the local entity;
- (2) shall be known as the "Local Building Authority of (name of the creating local entity)"; and
- (3) may:
 - (a) as provided in this chapter, construct, acquire, improve, or extend, and finance the costs of, one or more projects on behalf of the creating local entity, in order to accomplish the public purposes for which the creating local entity exists; and
 - (b) as provided in Part 5, Local Building Authority Bonds, issue and sell its bonds for the purpose of paying the costs of constructing, acquiring, improving, or extending a project.

Enacted by Chapter 360, 2008 General Session

17D-2-104. Local building authority property exempt from taxation.

Property owned, held, or acquired by a local building authority, including all rent or other payment due under a lease agreement, is exempt from all taxation in the state.

Enacted by Chapter 360, 2008 General Session

17D-2-105. Action of a local entity's governing body or a local building

authority's board of directors.

(1) The governing body of a local entity or the authority board of a local building authority may take an action or proceeding under this chapter by resolution.

(2) Except as specifically required under this chapter:

(a) an ordinance, resolution, or proceeding with respect to a transaction under this chapter is not necessary; and

(b) the publication of a resolution, proceeding, or notice relating to a transaction under this chapter is not necessary.

(3) The governing body of a local entity or authority board of a local building authority may adopt a proceeding under this chapter on a single reading at a legally convened meeting of the governing body or authority board, as the case may be.

(4) Except as specifically provided in this chapter, a resolution adopted or proceeding taken under this chapter is not subject to referendum.

Enacted by Chapter 360, 2008 General Session

17D-2-106. Publications in newspapers.

A publication made under this chapter may be made in a newspaper conforming to the terms of this chapter and in which legal notices may be published under the law, without regard to whether the newspaper is designated as the local entity's official journal or newspaper.

Enacted by Chapter 360, 2008 General Session

17D-2-107. Local building authority not subject to any state board, commission, or agency.

Neither a local building authority nor a project is subject to the jurisdiction of any board, commission, or agency of the state, including the Public Service Commission.

Enacted by Chapter 360, 2008 General Session

17D-2-108. Other statutory provisions.

(1) This chapter is supplemental to existing laws relating to a local entity's acquisition, use, maintenance, management, or operation of a project.

(2) Except as provided in this chapter, a local entity or local building authority that complies with the provisions of this chapter need not comply with any other statutory provision concerning the acquisition, construction, use, or maintenance of a project, including:

(a) a statute relating to public bidding; and

(b) Title 63G, Chapter 6a, Utah Procurement Code.

(3) A local building authority is, to the same extent as if it were a local district, subject to and governed by:

(a) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;

(b) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and

(c) Section 17B-1-108.

Amended by Chapter 347, 2012 General Session

17D-2-109. Construction of this chapter -- Conflicts with other provisions.

(1) To enable a local building authority to perform its essential governmental functions on behalf of its creating local entity, this chapter shall be liberally construed.

(2) (a) If a provision of this chapter conflicts with another statutory provision, the provision of this chapter controls.

(b) Subsection (2)(a) applies notwithstanding Section 11-14-403.

Enacted by Chapter 360, 2008 General Session

17D-2-110. Validation of previous proceedings.

Each proceeding taken by a local entity before May 5, 2008 in connection with the creation and operation of a local building authority is validated, ratified, approved, and confirmed.

Enacted by Chapter 360, 2008 General Session

17D-2-201. Creating a local building authority -- Articles of incorporation and bylaws -- Changing a local building authority.

(1) The governing body of a local entity may create a local building authority by following the procedures in Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, for the incorporation of a nonprofit corporation.

(2) The creating local entity's governing body shall approve:

(a) the local building authority's articles of incorporation before they are filed with the Division of Corporations and Commercial Code; and

(b) the local building authority's bylaws.

(3) The creating local entity's governing body may, in its sole discretion and at any time, change the local building authority's structure, organization, programs, or activities, subject to:

(a) this chapter; and

(b) the rights of:

(i) holders of the local building authority's bonds; and

(ii) parties to other obligations of the local building authority.

Enacted by Chapter 360, 2008 General Session

17D-2-202. Staff and personnel of a local building authority -- Legal, accounting, and auditing services.

(1) A local building authority may:

(a) as necessary for the local building authority's performance of its functions and activities:

(i) subject to Subsection (2), contract for or employ staff and other personnel, including the personnel of the creating local entity; and

(ii) contract with the creating local entity to use the creating local entity's property or facilities; and

(b) include the cost of the use of the creating local entity's personnel, property, or facilities under Subsection (1)(a) in the amount the local building authority charges under a lease or agreement with the creating local entity.

(2) (a) If a creating local entity has an elected attorney, that elected attorney shall be the legal advisor to and provide all legal services for the local building authority created by the creating local entity, subject to Subsection (3).

(b) If a creating local entity has an elected auditor, that elected auditor shall provide all accounting and auditing services for the local building authority created by the creating local entity, subject to Subsection (3).

(c) The local building authority shall reimburse the creating local entity for legal, accounting, and auditing services provided by the creating local entity's elected attorney or auditor, based on the actual cost of the services, including a reasonable amount that the creating local entity allocates for overhead, employee benefits, and general and administrative costs.

(3) Subsection (2) may not be construed to prevent a local building authority from obtaining:

(a) with the consent of the elected attorney and the governing body, legal services from an outside attorney;

(b) with the consent of the elected auditor and the governing body, accounting or auditing services from an outside accountant or auditor; or

(c) an opinion of an outside attorney or accountant that is necessary for the issuance of the local building authority's bonds.

(4) If fees for legal, accounting, or auditing services related to a project are paid by the creating local entity and not reimbursed by the local building authority, the local building authority may not include the cost of those services in the amount the local building authority charges under a lease agreement with the creating local entity with respect to that project.

Enacted by Chapter 360, 2008 General Session

17D-2-203. Local building authority board of directors.

(1) Except as provided in Subsection (3), the members of the governing body of the creating local entity constitute the authority board of the local building authority created by the creating local entity.

(2) An authority board may be referred to as a board of trustees.

(3) (a) For a local building authority whose creating local entity is a county that operates under the county commission form of government under Section 17-52-501, two members of the authority board may appoint an elected officer of the county to serve temporarily as a member of the authority board if the other authority board member:

(i) is, as a member of the county commission, placed on paid administrative leave under Section 17-16-10.5;

(ii) is unable to serve due to a disability;

(iii) has a conflict of interest with respect to a matter before the authority board that disqualifies the authority board member or causes the member to abstain from participating in action on that matter; or

(iv) is unable for any other reason to serve temporarily on the authority board or to participate in a matter before the board.

(b) An elected county officer appointed to an authority board under Subsection (3)(a) may serve only until the condition under Subsection (3)(a)(i), (ii), (iii), or (iv) causing the need for the appointment is no longer present.

Enacted by Chapter 360, 2008 General Session

17D-2-301. Project plans and specifications.

Each local building authority that proposes to construct, acquire, improve, or extend a project for the use of its creating local entity shall submit to the governing body of the creating local entity:

- (1) plans and specifications for the project; and
- (2) the estimated project costs.

Enacted by Chapter 360, 2008 General Session

17D-2-302. Architect or engineer certificate -- Approval of plans and specifications.

(1) The plans and specifications submitted under Subsection 17D-3-301(1) shall include a certificate of the architect or engineer responsible for planning and designing the project, stating the estimated useful life of the project.

(2) The creating local entity's governing body shall approve the plans, specifications, and estimated project costs before:

- (a) execution of a lease agreement with respect to the project; and
- (b) the local building authority begins to construct, acquire, improve, or extend the project.

Enacted by Chapter 360, 2008 General Session

17D-2-401. Project lease agreements.

(1) A local building authority and its creating local entity may enter into a lease agreement with respect to a project that the local building authority:

- (a) has constructed, acquired, improved, or extended on behalf of the creating local entity; or
- (b) will construct, acquire, improve, or extend on behalf of the creating local entity.

(2) (a) A local building authority and its creating local entity may enter into a lease agreement before the local building authority's acquisition of a site or construction of the project.

- (b) Each lease agreement described in Subsection (2)(a) shall:
 - (i) provide that the creating local entity is not required to make a lease payment until acquisition or construction of the project is completed; and
 - (ii) require the local building authority to furnish or cause the construction contractor to furnish a bond satisfactory to the creating local entity, conditioned upon:
 - (A) final completion of the project as expeditiously as reasonably possible from

the date of the execution of the lease agreement; and

(B) delivery of possession of the project to the creating local entity free and clear of all liens and encumbrances, except:

(I) taxes, liens, and encumbrances on the local building authority's interest in the leased property; and

(II) easements and restrictions that the creating local entity accepts.

Enacted by Chapter 360, 2008 General Session

17D-2-402. Requirements for lease agreements.

(1) Each lease agreement between a local building authority and its creating local entity shall:

(a) provide for the payment of lease payments sufficient:

(i) to pay:

(A) the principal of and interest on local building authority bonds the proceeds of which were used to construct, acquire, improve, or extend the project;

(B) all fees and expenses of trustees and paying agents for bonds described in Subsection (1)(a)(i)(A); and

(C) all costs of maintaining and operating the project; and

(ii) to accumulate any reasonable reserve that the local building authority considers necessary;

(b) provide that the creating local entity, if not in default under the lease agreement, may:

(i) subject to Subsection (2), renew the lease for a fixed term beyond the initial term by giving specified notice before the expiration of the initial term; and

(ii) subject to Subsection (3) and the terms of the lease agreement, purchase the leased property on a date fixed in the agreement;

(c) provide that a creating local entity under the lease agreement is not under any obligation:

(i) to purchase the leased property; or

(ii) to a creditor, shareholder, or security holder of the local building authority; and

(d) require that:

(i) title to the project vest in the creating local entity upon payment in full of all outstanding local building authority bonds issued to construct, acquire, improve, or extend a project; and

(ii) any remaining assets and net earnings of the local building authority be paid to the creating local entity upon dissolution of the local building authority, as provided in Section 17D-2-702.

(2) The term of a lease agreement under this part, including any renewal of the lease agreement, may not exceed the lesser of:

(a) the estimated useful life of the project, as certified under Subsection 17D-2-302(1); and

(b) 40 years.

(3) The purchase price of leased property under Subsection (1)(b)(ii) may not exceed the project costs that the local building authority actually invested in the project.

Enacted by Chapter 360, 2008 General Session

17D-2-403. Provisions that a lease agreement may contain.

(1) A lease agreement between a local building authority and its creating local entity may:

(a) provide that the creating local entity, as part of the lease payments for the leased property:

(i) pay all taxes and assessments levied against or on account of the leased property or rentals from it;

(ii) maintain insurance on the leased property for the benefit of the local building authority and the holders of the local building authority's bonds; and

(iii) assume all responsibility for any repair, replacement, alteration, or improvement to the leased property during the term of the lease agreement; and

(b) authorize the local entity to sublease all or specified portions of a project to:

(i) the state;

(ii) another local entity; or

(iii) a private party, including a nonprofit corporation, if the local building authority or local entity:

(A) intends to own the project throughout the useful life of the project; and

(B) determines that the local building authority or local entity's ownership of the project furthers a legitimate public purpose.

(2) A local entity that subleases some or all of a project under Subsection (1)(b) continues to be responsible for lease payments due under the lease agreement with the local building authority.

Enacted by Chapter 360, 2008 General Session

17D-2-404. Lease of local entity's site to local building authority.

(1) A local entity desiring to have a local building authority construct a project for the use of the local entity upon a site that the local entity owns may lease the site to the local building authority for a nominal rental.

(2) Each lease under Subsection (1) shall grant the local building authority an option to renew the lease on the same terms and conditions if, by the time of the expiration of the lease, the local building authority has not been fully repaid the project costs it actually invested in the project.

(3) A lease under this section, including any renewal of the lease under Subsection (2), may not exceed the period specified in Subsection 17D-2-402(2).

(4) (a) As used in this Subsection (4):

(i) "Project lease agreement" means a lease agreement between a local building authority and its creating local entity under which the local building authority leases to the creating local entity a project constructed on a site owned by the creating local entity.

(ii) "Site lease" means a creating local entity's lease of a site to a local building authority.

(b) A local entity that has entered into a site lease with a local building authority

may grant the local building authority an option to purchase the site within six months after the termination of the creating local entity's lease payment obligation under the project lease agreement, to be exercised if the creating local entity under the project lease agreement:

- (i) defaults under the terms of the project lease agreement; and
- (ii) does not exercise its option to purchase the project under the terms of the project lease agreement.

Enacted by Chapter 360, 2008 General Session

17D-2-405. Default under a lease agreement.

If a local entity fails to pay a lease payment due to a local building authority under a lease agreement:

- (1) the local entity shall immediately quit and vacate the project;
- (2) the local entity's lease payment obligation under the lease agreement terminates; and
- (3) the local building authority may immediately lease the project according to the provisions of:
 - (a) the proceeding under which bonds to fund the project were authorized; and
 - (b) any mortgage given to secure the bonds.

Enacted by Chapter 360, 2008 General Session

17D-2-501. Provisions applicable to issuance of local building authority bonds.

Except as otherwise provided in this chapter:

- (1) each local building authority that issues bonds shall:
 - (a) issue them as provided in Title 11, Chapter 14, Local Government Bonding Act, except Section 11-14-306; and
 - (b) receive the benefits of Title 11, Chapter 30, Utah Bond Validation Act;
- (2) bonds issued by a local building authority are governed by and subject to Title 11, Chapter 14, Local Government Bonding Act, except Sections 11-14-306 and 11-14-403; and
- (3) each local building authority that issues refunding bonds shall issue them as provided in Title 11, Chapter 27, Utah Refunding Bond Act.

Enacted by Chapter 360, 2008 General Session

17D-2-502. Required process for issuance of local building authority bonds.

- (1) A local building authority may not issue bonds unless the creating local entity's governing body approves the issuance and terms of the bonds.
- (2) (a) Before issuing bonds, the authority board of a local building authority shall give public notice of the authority board's intent to issue bonds.
- (b) (i) A local building authority may not issue bonds without the approval of the creating local entity's voters if, within 30 days after the notice under Subsection (2)(a) is

given, a written petition requesting an election is filed with the local building authority, signed by at least 20% of the active voters, as defined in Section 20A-1-102, within the creating local entity.

(ii) Each election under Subsection (2)(b)(i) shall be held as provided in Title 11, Chapter 14, Local Government Bonding Act, in the same manner as an election for general obligation bonds issued by the creating local entity.

Enacted by Chapter 360, 2008 General Session

17D-2-503. Proceedings for the issuance of local building authority bonds.

The proceeding under which a local building authority is authorized to issue bonds under this part may:

(1) contain any agreement or provision customarily contained in an instrument securing bonds, including a provision regarding:

(a) the fixing and collection of lease payments for a project covered by the bond proceeding;

(b) the terms to be incorporated in the lease agreement with respect to the project;

(c) the operation, maintenance, and insurance of the project;

(d) the creation and maintenance of a reserve fund from the proceeds of the sale of bonds or from lease payment revenue; and

(e) any rights and remedies available to the holders of the bonds or to the trustee, in the event of a default, that the authority board of the local building authority determines in accordance with this part;

(2) provide for the appointment of a trust company or bank, located inside or outside the state, as trustee; and

(3) provide that upon default in the payment of the principal of or interest on the bonds or in the performance of any covenant or agreement contained in the proceedings, the payment or performance may be enforced by the appointment of a receiver for the project, with power:

(a) to rent or lease some or all of the property;

(b) to charge and collect rent; and

(c) to apply revenue from the project in accordance with the bond proceeding.

Enacted by Chapter 360, 2008 General Session

17D-2-504. Local building authority bonds payable solely from lease payments.

(1) Except to the extent that they are secured as provided in Section 17D-2-505, bonds issued by a local building authority and interest on the bonds are payable solely from payments received under a lease agreement with the creating local entity with respect to the project that was financed with the bond proceeds.

(2) Each bond issued by a local building authority shall recite on its face that the bond is payable as provided in Subsection (1).

Enacted by Chapter 360, 2008 General Session

17D-2-505. Security for local building authority bonds.

(1) The principal of and interest on bonds that a local building authority issues under this part:

(a) shall be secured by a pledge and assignment of the revenue that the local building authority receives under its lease agreement with respect to the project that was financed with the bond proceeds;

(b) may be secured by:

(i) a mortgage covering some or all of the project;

(ii) a pledge and assignment of the lease agreement for that project;

(iii) money held in a reserve fund; and

(iv) any other security device with respect to the project that the local building authority considers most advantageous.

(2) A proceeding under which a mortgage is given to secure the bonds of a local building authority may contain any agreement or provision listed in Section 17D-2-503 that could be contained in a proceeding under which a local building authority is authorized to issue bonds under this part.

(3) A mortgage to secure bonds issued by a local building authority under this part may provide that:

(a) upon default in its payment or the violation of any covenant or agreement contained in the mortgage, the mortgage may be foreclosed in the manner permitted by law; and

(b) the trustee or holder of any bond secured by the mortgage may become the purchaser at a foreclosure sale, if the trustee or holder is the highest bidder.

Enacted by Chapter 360, 2008 General Session

17D-2-506. Other entities not responsible for local building authority bonds or breach of mortgage and other obligations.

(1) Nothing in this part may be construed to require:

(a) the state or any political subdivision of the state to pay a bond issued under this part;

(b) the state or, except the creating local entity, any political subdivision of the state to pay any rent or lease payment due to a local building authority under the terms of a lease agreement; or

(c) the creating local entity to appropriate money to pay:

(i) principal of or interest on bonds issued by a local building authority; or

(ii) the lease payments under a lease agreement with the local building authority.

(2) A breach of a mortgage or a covenant or agreement in a mortgage may not impose a general obligation or liability upon or a charge against:

(a) the creating local entity; or

(b) the general credit or taxing power of the state or any political subdivision of the state.

Amended by Chapter 356, 2009 General Session

17D-2-507. Required provision in device securing payment of bonds.

Each mortgage, trust deed, security agreement, trust indenture, or other security device securing payment of bonds issued under this part shall provide that no deficiency judgment upon foreclosure may be entered against:

- (1) the local building authority;
- (2) the state; or
- (3) any political subdivision of the state.

Enacted by Chapter 360, 2008 General Session

17D-2-601. Publishing notice of local entity or local building authority resolution or other proceeding.

(1) The governing body of a local entity or the authority board of a local building authority may provide for the publication of a resolution or other proceeding adopted under this chapter by the governing body or authority board, respectively:

- (a) in a newspaper of general circulation in the local entity; and
- (b) as required in Section 45-1-101.

(2) (a) If the resolution or other proceeding provides for the local building authority's issuance of bonds, the authority board may, in lieu of publishing the entire resolution or other proceeding, publish a notice of the bonds to be issued.

(b) Each notice under Subsection (2)(a) shall comply with the requirements of Subsection 11-14-316(2).

(c) The authority board of a local building authority publishing a notice under Subsection (2)(a) shall make a copy of the resolution or other proceeding authorizing the issuance of the local building authority bonds available for public inspection during regular business hours at the office of the local building authority for a period of at least 30 days after publication of the notice.

Amended by Chapter 388, 2009 General Session

17D-2-602. Contesting the legality of a resolution or other proceeding -- No cause of action after contest period.

(1) For a period of 30 days after publication of a resolution or other proceeding under Subsection 17D-2-601(1) or a notice under Subsection 17D-2-601(2), any person in interest may file an action in district court contesting the regularity, formality, or legality of:

- (a) a resolution or other proceeding;
- (b) any bonds or a lease agreement authorized by a resolution or other proceeding; or
- (c) any provision made for the security or payment of local building authority bonds or lease agreement.

(2) After the period referred to in Subsection (1), no one may have a cause of action to contest for any reason the regularity, formality, or legality of any of the matters listed in Subsection (1).

Amended by Chapter 369, 2012 General Session

17D-2-701. Local entity governing body may dissolve local building authority -- Limitation.

(1) Subject to Subsection (2), the governing body of the creating local entity may at any time dissolve a local building authority created by the creating local entity, by following the procedures in Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, for the dissolution of a nonprofit corporation.

(2) A creating local entity's governing body may not dissolve a local building authority unless:

(a) (i) the principal, interest, and any redemption premium on all outstanding bonds of the local building authority are paid in full; and

(ii) all other obligations of the local building authority are paid in full; or

(b) the local building authority has made provision for the payment, when due, of all bond and other obligations described in Subsection (2)(a).

Enacted by Chapter 360, 2008 General Session

17D-2-702. Effect of dissolution.

Upon the dissolution of a local building authority:

(1) title to all of the local building authority's projects vest in the creating local entity; and

(2) all assets and net earnings of the local building authority remaining after the payment or providing for the payment of all local building authority bonds and other obligations shall be transferred to the creating local entity.

Enacted by Chapter 360, 2008 General Session